

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SUSAN BOWMAN, an individual; and)
DISABILITY RIGHTS ENFORCEMENT,)
EDUCATION SERVICES: HELPING YOU)
HELP OTHERS, a California public)
benefit corporation,)

Plaintiffs,)

v.)

BEST WESTERN STATION HOUSE INN;)
THE WILLIFORD FAMILY PARTNERSHIP,)
L.P., a California limited)
partnership; BEST WESTERN INTER-)
NATIONAL, INC., an Arizona)
corporation and LEWIS T. WILLIFORD,)
an individual dba BEST WESTERN)
STATION HOUSE INN,)

Defendants.)

2:04-cv-0755-GEB-PAN

ORDER

On December 12, 2005, the parties filed a Joint Pretrial Statement ("JPS"), which pursuant to the Rule 16 Scheduling Order was supposed to delineate the issues for trial. The Court reviewed the JPS in preparation for the Final Pretrial Conference scheduled on December 19, 2005. In light of the JPS, the Final Pretrial Conference is vacated, summary judgment will be entered on the only federal question because Plaintiff Susan Bowman lacks standing, and the remaining state claims will be dismissed under 28 U.S.C. § 1367(c).

1 The only federal question is whether Bowman is entitled to
 2 injunctive relief under the Americans with Disabilities Act ("ADA"),
 3 which would require the removal of architectural barriers at the Best
 4 Western Station House Inn ("the Inn") located in the City of South
 5 Lake Tahoe. Since the parties' JPS reveals it is undisputed that
 6 Bowman has no intention of returning to the Inn, Bowman lacks Article
 7 III standing to seek injunctive relief under the ADA. (JPS at 12.)

8 To establish Article III standing, Bowman must demonstrate
 9 she faces "a real and immediate . . . threat of *future injury*" that
 10 can be addressed through injunctive relief. Church v. City of
 11 Huntsville, 30 F.3d 1332, 1337 (11th Cir. 1994).

12 Because injunctions regulate future conduct, a
 13 party has standing to seek injunctive relief only
 14 if the party alleges . . . a real and immediate--
 15 as opposed to a merely conjectural or
 16 hypothetical-- threat of *future injury*.
 17 Logically, "a prospective remedy will provide no
 18 relief for an injury that is, and likely will
 19 remain, entirely in the past." Although "past
 20 wrongs are evidence bearing on whether there is a
 21 real and immediate threat of repeated injury,"
 22 "[p]ast exposure to illegal conduct does not in
 23 itself show a present case or controversy
 24 regarding injunctive relief . . . if unaccompanied
 25 by any continuing, present adverse effects."

26 Id. (citations omitted). Consequently, "[i]n ADA cases, courts have
 27 held that a plaintiff lacks standing to seek injunctive relief unless
 28 [she] alleges facts giving rise to an inference that [she] will suffer
 29 future discrimination by the defendant." Shotz v. Cates, 256 F.3d
 30 1077, 1081 (11th Cir. 2001).

31 Therefore, the fact that Bowman may have suffered an injury
 32 in the past, "does not in itself show a present case or controversy
 33 regarding injunctive relief . . . if [the showing is] unaccompanied by
 34 any continuing, present adverse effects." Lujan v. Defenders of

1 Wildlife, 504 U.S. 555, 564 (1992) (citations omitted). Even when a
 2 plaintiff declares in a vague manner an intent "to return to the
 3 places [she] had visited before . . . '[s]uch some day' intentions --
 4 without any description of concrete plans, or indeed even any
 5 specification of *when* the some day will be -- do not support a finding
 6 of the 'actual or imminent' injury that our cases require." Id.
 7 "Absent such an allegation, the likelihood of future discrimination
 8 remains conjectural, hypothetical, or contingent, and not real and
 9 immediate." Shotz, 256 F.3d at 1082.

10 The "Undisputed Facts" section of the JPS states Bowman "has
 11 not returned to Lake Tahoe, and does not plan to return to Lake Tahoe,
 12 because the altitude affects her health." (JPS at 12.) Since Bowman
 13 concedes "it is highly unlikely that she will ever again be in a
 14 position where any discrimination by [the Inn] against disabled
 15 individuals will affect her personally," she "has failed to suggest
 16 [she is likely to experience] a 'real or immediate threat' of future
 17 discrimination by [the Inn]." Shotz, 256 F.3d at 1081-82. Therefore,
 18 summary judgment is entered in favor of Defendants on Bowman's ADA
 19 claim.¹

21 ¹ The entry of summary judgment is consistent with the warning
 22 in the Status (Pretrial Scheduling) Order filed October 7, 2005:

23 [S]ince [the] process [of having the parties delineate trial
 24 issues in a JPS] is designed to promote efficiency and conserve
 25 judicial resources, "there is no reason to require that the
 26 elimination of non-trialworthy claims await a formal motion for
 27 summary judgment." Berkovitz v. Home Box Office, Inc., 89 F.3d
 28 24, 29 (1st Cir. 1996). *"If the pretrial [statement] discloses
 that no material facts are in dispute and that the undisputed
 facts entitle one of the parties to judgment as a matter of law,"
 the Court may summarily dispose of the case or issue. Portsmouth
 Square v. Shareholders Protective Comm.*, 770 F.2d 866, 868-69
 (9th Cir. 1985) (emphasis added).

(continued...)

Defendants argue "[b]ecause the only federal claim is one for ADA violations, and Plaintiff's claims should be dismissed on . . . standing grounds, this court should dismiss Plaintiff's state law claims." (JPS at 24.) Under 28 U.S.C. § 1367(c), a district court may decline to exercise supplemental jurisdiction over a state claim when "the district court has dismissed all claims over which it has original jurisdiction" City of Chicago v. Int'l Coll. Of Surgeons, 522 U.S. 156, 173 (1997). "In the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine -- judicial economy, convenience, fairness, and comity -- will point toward declining to exercise jurisdiction over the state-law claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988); City of Chicago, 522 U.S. at 173 (1997) ("when deciding whether to exercise supplemental jurisdiction, 'a federal court should consider and weigh in each case, . . . the values of judicial economy, convenience, fairness, and comity'").

The state law claims in this action assert violations of (1) the Disabled Persons Act, California Civil Code §§ 54 et seq., (2) California Health and Safety Code § 19955 et seq., and (3) the Unruh Civil Rights Act, California Civil Code § 51 et seq. (JPS at 20-22.) The relief sought includes injunctive relief, general and special damages, punitive damages, and attorney fees. (Id. at 20-22.) The parties have requested a jury trial on the state issues, including whether each Defendant "breached a duty of care to Plaintiff," and

¹(...continued)

1 whether "the breach of duty proximately caused Plaintiff's injuries."
2 (Id. at 4.) In addition, the parties have requested that the court
3 determine whether each Defendant owed a duty of care to Plaintiff,
4 which under California law involves consideration of several policy
5 factors. See e.g. Sakiyama v. AMF Bowling Centers Inc., 110 Cal. App.
6 4th 398, 405 (2003).

7 Determination of these state issues should be decided in a
8 state forum because "[n]eedless decisions of state law should be
9 avoided both as a matter of comity and to promote justice between the
10 parties, by procuring for them a surer-footed reading of applicable
11 law." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966).
12 As a matter of comity and to provide the parties with "a surer-footed
13 reading of applicable [California] law" in a state forum, the Court
14 declines to continue exercising supplemental jurisdiction over the
15 state law claims. See id. Therefore, the state law claims are
16 dismissed without prejudice as of the date on which this Order is
17 filed.

18 The Clerk of Court shall enter judgment in favor of
19 Defendants on the claims under the Americans with Disabilities Act.

20 IT IS SO ORDERED.

21 Dated: December 16, 2005

22
23 /s/ Garland E. Burrell, Jr.
24 GARLAND E. BURRELL, JR.
25 United States District Judge
26
27
28